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COMMITTEE AGAINST TORTURE

Twenty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 399th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 November 1999, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.399/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Peru (CAT/C/39/Add.1 and CAT/C/20/Add.6; HRI/CORE/1/Add.43/Rev.1)

1. At the invitation of the Chairman, Mr. Voto-Bernales, Mr. García-Corrochano, Mr. Quesada Inchaústegui, Mr. Chávez and Mr. Figueroa Navarro (Peru) took places at the Committee table.

2. The CHAIRMAN invited the Peruvian delegation to introduce the third periodic report of Peru (CAT/C/39/Add.1).

3. Mr. GARCÍA-CORROCHANO (Peru) said that the presence of the Peruvian delegation in the Committee testified to Peru's determination to strengthen cooperation with the international human rights system. His Government had sought to take into consideration the conclusions formulated by the Committee following the presentation of Peru's second periodic report (CAT/C/20/Add.6), notably in the area of military and police training, as well as with regard to the penalties imposed for committing torture and other cruel, inhuman or degrading acts.

4. A year and a half had elapsed since the promulgation of Act No. 26926, which, as explained in paragraph 2 of the periodic report, had specified the offence of torture, and it was therefore premature to assess its effects in practice. The purpose of the Act was to prevent torture and strengthen public awareness of the need to protect the physical and psychological integrity of the individual.

5. With regard to the emergency situation and the exceptional measures taken, for more than a decade Peru had had to combat systematic human rights violations committed by terrorist groups. The success of that effort had received international recognition. A number of isolated cases of abuse had, however, occurred. While not wishing to justify those isolated cases of torture, Peru sought the Committee's understanding for the domestic violence that the country had experienced, the product of terrorist activities which had led certain elements in the armed forces and the police to make disproportionate use of force. By no means did that imply that torture was practised systematically or tolerated by the authorities or that it was on the rise. On the contrary, allegations of torture had declined perceptively. The isolated cases had taken place in a particular situation, which already belonged to the past.

6. Peru had continued to strengthen its institutions in accordance with the democratic form of government it had chosen by constitutional means. The administration of justice was undergoing major modernization; that included the gradual reform of criminal procedure, so that citizens had real access to justice and enjoyed the effective protection of their rights. Regulations governing probation, time limits on detention and procedures and requirements for

obtaining certain prison benefits were under review, as part of a policy of decriminalization. The result had been a lower prison population and prisons that were more salubrious and conducive to achieving the goal of resocialization.

7. In accordance with the Peruvian Constitution, the application of military justice to civilians was confined to cases of terrorism and State treason. The military courts had recently played an active part in trying the detained leaders of terrorist groups. Legislative Decree No. 895, the Aggravated Terrorism Act, made it easier for military courts to try members of criminal bands, associations or groups that used weapons or explosives to perpetrate robberies, kidnappings, extortion or other offences. The Act had been promulgated to deal with the domestic insecurity brought about by the activities of organized crime. One year since its entry into force, such crimes had declined substantially; accordingly, the President had initiated a bill, to be submitted to the parliament, which would transfer to civilian courts the power to try the offences listed in the Act.

8. Since the submission of its third periodic report, Peru had restructured the Office of the Public Defender, whose purpose was to provide free legal counsel to persons of modest means. Under the new rules, the public defenders, who were assigned to police stations, assumed the defence of persons under police investigation. Owing to budgetary constraints, the system was being introduced gradually.

9. Peru shared the Committee's concern about the need to improve conditions in detention centres and in particular to overcome crowding and improve health conditions. A larger infrastructure was needed to house the growing number of prisoners. Thanks to major investments, 20 new prisons had been opened nationwide, and another two would soon be completed. Peru's current policy was to impose prison sentences only when truly necessary. Recent legislation had increased the scope of non-custodial penalties; community service could be substituted for as many as four years' imprisonment. Under recently promulgated legislation, persons awaiting trial must not be forced to work against their will. With a view to improving prison conditions, a recent decree had amended the regulations on persons accused and convicted of the offences of terrorism and State treason, increasing by one hour the outdoor exercise period for inmates being held under special maximum-security and medium-security conditions. Similar changes to visiting rules were under review. The national prison administration was also training its technical and security staff to replace police officers in prison establishments.

10. Peru attached great importance to the professional training of law enforcement officers, both civilian and military, medical personnel, public officials and other persons involved with the custody, interrogation or treatment of persons in detention or prison. In view of the isolated cases referred to earlier, his Government had intensified its prevention efforts. For example, all police personnel had received a copy of the March 1996 police manual, which set out rules for police investigation and conditions for ordering detention and listed detainees' rights. Detainees must be allowed to have a medical examination and must be treated with respect; they must not be tortured or treated in an inhuman or humiliating manner. Obtaining statements by violence was a criminal offence. The manual specified that the general rules for interrogation were applicable as soon as detention began and until the interrogation document was drafted. The physical integrity of the detainee must be protected.

11. His Government was also assessing the possibility of limiting the value of police affidavits by subjecting them to more stringent legal formalities, while redefining the extent to which a confession could be used as evidence.

12. In January 1999, the National Police had issued a directive on human rights training in the police that was in line with the relevant provisions of international human rights instruments.

13. In 7 May 1999, the National Police had approved a plan to train police officers and human rights instructors in the special state agencies (Agency to Combat Racism, National Narcotics Agency, National State Security Agency, National Agency for Criminal Investigation, Intelligence Agency and National Agency for Road Safety), as well as the regional police of the Department of Lima. A full five-week programme had been held at the police academy, with theoretical and practical courses offered by highly-qualified experts from civil society and the assistance of the International Committee of the Red Cross (ICRC) and the Office of the Public Defender; it had relied heavily on the Human Rights Centre's Manual on Human Rights Training for the Police (Professional Training Series No. 5 - Human Rights and Law Enforcement), as well as the ICRC's handbook "to serve and to protect: human rights and humanitarian law for police and security forces". The purpose of programme had been to heighten the awareness of police staff and help bring about a change in attitudes in order to overcome the problems referred to by the Committee. Training had been supervised by the Office of Human Rights of each police directorate and by the training division of the National Police.

14. For the second half of 1999 and for the year 2000, it was planned to carry out a nationwide ICRC-backed information campaign, with courses and seminars at all educational levels and for all police officers, regardless of rank, and to pursue United Nations technical assistance on promoting a culture of respect for human rights. In that connection, his delegation had recently met with the Deputy High Commissioner for Human Rights in order to give fresh impetus to international assistance in human rights training for members of the police and armed forces.

15. The CHAIRMAN, speaking in his capacity as country rapporteur, welcomed Peru's efforts to change attitudes in the country's police force. The Committee against Torture was aware that for some 20 years, the lawful Government of Peru had had to face the combined effects of terrorist activities and organized crime; indeed, it was often difficult to distinguish between those two phenomena. But there could be no justification for conduct amounting to torture, no matter how serious the threat to State stability. He recommended Peru for introducing a definition of torture which, although not identical to the Convention's, was very similar.

16. Turning to a number of specific questions, he began by asking which areas of Peru were still under emergency rule; could the Peruvian delegation describe the situation there? Paragraph 22 of the periodic report acknowledged that some elements of the security forces had committed excesses. He asked the Peruvian delegation to provide figures on the number and type of such cases and how the persons involved had been punished. There seemed to be an inconsistency between the assertion at the end of paragraph 22 and the two amnesty laws dating from the period 1980 to 1989, which had clearly been in breach of the obligations under articles 6, 7 and 12 of the Convention and also seemed to be in violation of the Inter-American Convention to Prevent and Punish Torture and customary international law. The State party

contended that because abuses affected only a small geographic area and took place in a relatively short period, they did not constitute systematic violations of human rights. Violations were, however, considered systematic if the State ordered or condoned them, regardless of their scope or where and when they took place.

17. The report stated that extradition was not applicable to persons prosecuted for political offences or related acts, but that those non-extraditable acts were not deemed to include genocide, assassination of prominent persons or terrorism. The Committee would want to know whether crimes against humanity, including torture, would be considered extraditable offences.

18. One of the shortcomings of the periodic report was that it did not provide direct responses to the matters of concern and recommendations issued by the Committee after the consideration of the previous report. For example, the Committee was very concerned about the independence of the judiciary and the procurators, for two main reasons. The independence of the judiciary, and in the civil law system of the procurators, was a sine qua non for democracy to be healthy and survive. That also meant that the method of appointment of judges must be objective, and that judges must have security of tenure. Yet according to the Report of the Working Group on Arbitrary Detention, some 75 per cent of Peruvian judges held no tenure. Since they could be removed at will, they would be subject to influence by those who could remove them from office. Was the Ministry of Justice taking any steps to change that situation? Did the Government consider that it required correction, and if not, on what basis could it contend that the judiciary was genuinely independent?

19. Another matter of serious concern to the Committee was the length of pre-trial detention, which was apparently still set at 15 days, with an extra 10 days for aggravated treason. In the view of the State party detainees were not held incommunicado, because a procurator could, and was indeed obliged to, gain access to them to ensure proper conditions of detention. In a common law system, it would be laughable to state that access to a prosecutor would remove the incommunicado aspect of detention. In Peru, the independence of the procurator would be less than certain, for the reasons cited earlier. The incommunicado aspect of detention could only be removed if the detainee had access to someone capable of independently assessing his or her situation and invoking whatever legal protection applied, such as a relative, a lawyer, a doctor or a clergyman.

20. He was not sure he understood paragraph 48 of the report, where the Government referred to wrongful exploitation of the principle of equality before the law in justifying incommunicado detention. Perhaps the delegation could explain what was meant by wrongful exploitation, and how incommunicado detention corrected it. On the other hand, he was very pleased that Peru had, as stated in paragraph 82, established a National Register of Detainees and Persons Sentenced to a Custodial Penalty, which he considered an enlightened measure. Could anyone have access to the information in the register, and specifically, was it accessible to the relatives of arrested persons?

21. The 1999 report of the Special Rapporteur on torture (E/CN.4/1999/61) had mentioned a number of cases which were of interest to the Committee. Had the Government investigated those cases? Could it inform the Committee of the outcome of any inquiries it had initiated? The periodic report included no sex-disaggregated data. It was particularly clear from the

information provided to the Committee by non-governmental organizations that women, and particularly those accused of breaches of anti-terrorism laws, had been especially vulnerable to certain methods of torture. For example, in a report entitled Women and Torture in Peru, the World Organization against Torture (OMCT) had noted that of 165 women accused of terrorism who had said they were innocent, 118 had claimed they had been tortured. Some 15 per cent of women had allegedly been raped by members of the security forces. What protection was granted to women detained by the security forces? Had the Peruvian Government taken any measures, as required under the Convention, to bring to justice the security officers who had allegedly committed some extremely brutal sexual violence against Maria Elena Loayza, who had recently been released pursuant to a ruling by the Inter-American Court of Human Rights? Had the victim been compensated?

22. According to information received from Amnesty International, the national press in Peru had reported in May 1999 that a lieutenant who had been charged with the massacre in 1985 of 65 women, children and men in the department of Ayacucho had remained in the army and had even been promoted. President Fujimori had expressed outrage and had promised that the officer would be removed from the military. If the allegation proved true, that would be among the worst individual acts of modern times. Since the President of the Republic had become aware of the case, an investigation had no doubt been conducted. Could the delegation inform the Committee whether the officer in question had been suspended and prosecuted?

23. It was clear that one of the main purposes of the Convention was to ensure that there would be no impunity for torture. Amnesty laws were in conflict not only with the provisions of the Convention, but also with customary international law, which allowed for no impunity in cases of crimes against humanity. Whether or not it was widespread and systematic, torture was held to be a crime against humanity. Given its enactment of the immunity from prosecution legislation covering a crucial 15-year period of its history, how could the Government of Peru maintain that it was establishing a system respectful of human rights when so many active members of the armed forces and possibly the police forces enjoyed such impunity?

24. Could the delegation explain why the Government had decided to withdraw from the jurisdiction of the Inter-American Court of Human Rights? That body was recognized as an authoritative and important part of the international human rights mechanism, as it supported human rights in a large and crucial region of the world. Was the Government considering renewing its commitment to that body?

25. It was his understanding that military judges and prosecutors were appointed from among officers serving in the armed forces. Could the delegation describe their qualifications? As in any country, in Peru the military hierarchy would no doubt be very strong. In such circumstances defence lawyers and prosecutors would have a great deal of difficulty taking a robust stand and maintaining their independence if the judges hearing their cases were high-ranking officers. The question was particularly important in light of the fact that so many cases, especially in previous years, had been heard by military rather than civil tribunals.

26. In the delegation's oral presentation, it had mentioned that the crime of torture had been introduced into the Penal Law just 18 months before, and that it was probably still too soon to assess the effectiveness of the legislation. Perhaps the delegation could inform the Committee whether anyone at all had been indicted for torture or any other gross breach of basic human rights. The Committee would simply want to be reassured that notwithstanding the amnesty laws which covered past practices, the police and prosecutors would act to stop torture in the future.

27. The Committee would also like to be reassured that the institutions were in place to provide victims of torture in Peru with exoneration of their victimization through the prosecution of those responsible for torture, and with proper compensation when the torture was practised by persons acting on behalf of the State.

28. Mr. MAVROMMATIS (Alternate Country Rapporteur) considered that although the periodic report had been submitted with some delay, it was of good quality, presented interesting analyses and explained the Government's views. If there had indeed been some improvement in the security situation in Peru, perhaps the Government should consider updating its core document to reflect those changes.

29. It was not only the right but also the duty of the Government to combat terrorism. When a country faced such adversity, it also served as a litmus test of the application of human rights and fundamental freedoms, as it was during such times of difficulty that it would become clear whether the guarantees intended to prevent excesses were effective in practice. In Peru's case, the Government's success in combating terrorism had led to a number of positive developments. Slowly, the country appeared to be building a framework with which to protect human rights, but it still lacked effectiveness. It would be impossible to give effect to human rights in a context where the culture of impunity persisted. Past amnesties and the current failure to prosecute would condemn any such endeavour to failure.

30. It was encouraging that the delegation had referred to human rights training of the security forces. Perhaps it could inform the Committee whether such measures had been taken for both the police and the military, which bore the brunt of the efforts to combat terrorism. It would also be of interest to learn about measures taken to train medical practitioners in respect of matters connected with torture, and especially concerning their ability to examine cases.

31. The Government had reported a decline in the number of complaints of torture. The Committee would require statistical information quantifying that reduction in order to have a clearer idea of the situation. The National Human Rights Commission, which was under the Ministry of the Interior, should be entirely independent, as Peruvians who for any reason doubted its impartiality would surely be reluctant to lodge complaints with it. The delegation could also describe specific safeguards and measures taken to prevent torture or cruel treatment during interrogation. One such measure, the establishment of the National Register of Detainees, was of particular importance and would prove especially effective, provided it was made available to relatives, lawyers, doctors and others.

32. The office of the Ombudsman rarely had legal powers, even in the Scandinavian countries where that institution had originated. However, their recommendations were almost always heeded. Was that the case in Peru?

33. The very reason for the existence of the Convention and of other conventions was to stress that there could be no impunity, no amnesty, no prescription and no exclusive venue for the trial of acts of torture. An amnesty of those responsible for torture would only be a sure recipe for repetition of such acts.

34. The delegation should describe the procedure for the examination of cases when proceedings were instigated not by the victims or their relatives, but upon the initiative of a government or judicial body. The fact that Peru had ceased the practice of using "faceless judges" was a welcome development.

35. He wanted to know whether the Peruvian Constitution still made provision for automatic application of the decisions taken by international courts of human rights. If not, what were the reasons? Concerning article 13, he asked first how effective habeas corpus was in Peru and whether any suspected terrorist had ever been released as a result of its application. Secondly, paragraph 95 of the report stated that officials and public servants accused of the crime of torture could be brought to trial in the ordinary manner before the ordinary courts. He would like to know whether that also applied to military personnel. Lastly, in cases concerning allegations of torture or cruel treatment, he asked whether a witness or complainant was at risk of being prosecuted if it was thought that he had perjured himself when the complaint was made.

36. In respect of article 14, the report gave the impression that judges who awarded compensation to the victims of torture did not have the power to order that the compensation be paid. He asked the delegation to comment on the situation, and to say whether the victim had a choice between criminal and civil courts in such cases, since it was well known that the latter tended to award greater amounts of compensation. Concerning article 15, he asked the delegation to clarify the process for preventing statements obtained through torture from being used as evidence in proceedings.

37. The Committee was concerned that certain facilities in Peru were being used to keep prisoners in constant isolation, under conditions which constituted cruel, inhuman or degrading treatment within the meaning of article 16. He asked the delegation to comment on the situation, with particular reference to the treatment of Abimael Guzman, the former leader of Shining Path. Reverting to the information given on article 12 in the report, he noted that members of the judicial police participating in the investigation of offences were required to transmit to the examining magistrate an affidavit containing all the information that had been collected. People involved in the various stages of the investigation were required to sign those parts of the affidavit for which they were responsible, and if they were unable to sign, their fingerprints were affixed to the document. If the latter was a frequent occurrence, he wondered what level of training and education the judicial police received.

38. Lastly, he welcomed Peru's improved record at the Latin American Court of Human Rights. He hoped that the struggle against terrorism would prove successful, and that the relaxation of some of the draconian measures which had been taken would continue. He also looked forward to Peru's further progress towards making a declaration concerning the receipt of communications under articles 21 and 22. He would like to see greater political resolve and more effective measures devoted to dealing with the many complaints of torture still made against Peru, and disagreed with the delegation's contention that such complaints were isolated. The evidence received suggested otherwise.

39. The Peruvian delegation withdrew.

The meeting rose at 11.40 a.m.